IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2412 OF 2006

Shri Ramdas Damodar Sali. ...Petitioner.
Vs.
Nasik Jilha Dekhrekh Sahakari Society Ltd. & Anr. ...Respondents.

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Mr.Ravindra Nair for the Petitioner.

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CORAM : DR.D.Y.CHANDRACHUD, J.

June 22, 2006.

P.C.

The Petitioner who was a clerk, was dismissed from service on 6th August 1973. The order of termination was challenged on 4th December 1998 by instituting a complaint of unfair labour practice before the Labour Court at Nasik. Evidence was adduced before the Labour Court. In the application for condonation of delay, the ground for condonation that was advanced was that certain Criminal Cases were pending against the Petitioner and that the employer had taken a decision that the Petitioner could not be taken back into service until the complaints were disposed of. The Labour Court condoned the delay. A revision was carried to the Industrial Court which has set aside the

order of the Labour Court.

On behalf of the Petitioner it has been submitted that the Industrial Court, exercising revisional jurisdiction, should not have interfered with the order of the Labour Court to condone the delay. Ordinarily, the order passed by the Labour Court condoning delay would not be interfered with by the Industrial Court, particularly when there has been a judicious exercise of discretion. The facts of the present case, however, clearly demonstrate that the order of the Labour Court did not constitute a judicious exercise of discretion at all. There was a delay of 25 years in challenging the order of termination. The contention of the Petitioner was that the employer had adopted the stance that during the pendency of the criminal case, the Petitioner would not be reinstated. However, in the course of the cross-examination, the Petitioner stated thus:

> "As criminal case was pending, I did not file any proceeding from 1973 till the filing of present complaint. Nobody was given me letter not to file complaint in Labour Court till the decision of proceeding pending before the Court. I have not produced any proof to show that respondents told me not to file case before Labour Court till the decision of criminal case."

Now, the mere pendency of a criminal case could not have possibly been a bar to the workman espousing such

remedies as were available to him in Industrial Law. The cross-examination of the workman shows that it was because of the pendency of the criminal case that he did not institute any proceedings from 1973 to 1998. In a subsequent part of the cross-examination it is admitted that until 1978, no case was pending before any Court. The criminal prosecution was initiated in 1978. Therefore, between 1973 and 1978 no criminal case was, in any event, pending against him. This delay is unexplained. That apart, the mere pendency of a criminal case would be no reason for condoning the delay. The Industrial Court was in these circumstances justified in exercising the revisional jurisdiction since the order of the Labour Court suffered from a clear error apparent on the face of the record. The Labour Court manifestly erred in exercising its discretion to condone the delay which was totally unexplained.

In these circumstances, there is no merit in the petition which is accordingly dismissed.

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